

THIS DOCUMENT IS THE PROPERTY OF HIS BRITANNIC MAJESTY'S GOVERNMENT

Printed for the Cabinet. April 1949

SECRET

Copy No. 31

C.P. (49) 87

12th April, 1949

CABINET

GERMANY: OCCUPATION STATUTE AND ANCILLARY DOCUMENTS

NOTE BY THE PRIME MINISTER

AT their meeting on 7th April (C.M. (49) 26th Conclusions, Minute 3), the Cabinet decided to give the Foreign Secretary discretion to conclude the best agreement he could on the basis of the American drafts for an Occupation Statute and Tripartite Control Agreement for Germany, but called his attention to three points on which he was asked to do his best to secure satisfaction.

In the absence of the Foreign Secretary, I circulate, for the information of my colleagues, a memorandum by the Foreign Office annexing the text of the documents which have been drawn up in Washington, and showing to what extent the Foreign Secretary was able both to meet the wishes of the Cabinet, and to deal with a number of less important points raised on the departmental level. It will be seen that during the final stage of the negotiation the Foreign Secretary was able to secure a large measure of satisfaction on all these points.

C. R. A.

10 Downing Street, S.W. 1,
12th April, 1949.

36889A

GERMANY : OCCUPATION STATUTE AND ANCILLARY DOCUMENTS

MEMORANDUM BY THE FOREIGN OFFICE

Annexed to this memorandum are the texts of the documents signed by the three Foreign Ministers in Washington on 8th April, 1949. The main documents are :—

- (i) An agreed memorandum on principles governing the exercise of powers and responsibilities of the United States, United Kingdom and French Governments following the establishment of the German Federal Republic (Annex A).
- (ii) An Occupation Statute, with a covering message to the Parliamentary Council at Bonn from the Foreign Ministers (Annex B and Annex I).
- (iii) An agreement on Tripartite Controls (Annex C).

Previous Discussion

At their meeting on 7th April (C.M. (49) 26th Conclusions, Minute 3), the Cabinet decided to give the Secretary of State for Foreign Affairs discretion to reach the best agreement he could on the basis of the American proposals. They called his attention, however, to the following points and asked him to do his best to secure complete or partial satisfaction on them :—

- (i) the reappearance of weighted voting, even in the limited manner proposed by the Americans;
- (ii) the omission in the American draft of reserved powers to prevent unfair trade practices, including internal discrimination against British interests;
- (iii) the omission of power to exact the repayment of expenditure incurred on behalf of Germany.

It will be seen from a study of Annexes A, B and C that the Secretary of State has been largely successful in covering these points.

Weighted voting is now confined solely to matters of foreign trade and foreign exchange, the reference to other "internal action" being omitted. The weighted vote can only be exercised "when action will increase the need for assistance from the United States appropriated funds." Moreover, the weighted vote may not be used to contravene inter-governmental agreements or the principles of non-discrimination. Finally, the draft implies and the United States representatives have recognised, that questions of interpretation are subject to simple majority voting and not to weighted vote. This is important, since this interpretation would debar the Americans from arbitrarily invoking the weighted vote.

Unfair trade practices.—This point has now been covered twice. In the Occupation Statute (Annex B) non-discrimination in trade matters is now included among the fields in which powers are reserved under paragraph 2B. It also appears in paragraph 5 of the Tripartite Control Agreement (Annex C).

Repayment of expenditure incurred on behalf of Germany.—In addition to a reference to "foreign interests in Germany and claims against Germany," the Secretary of State has secured the acceptance of an agreed minute (Annex E) in which the three Governments proclaim their intention of drawing up proposals for the settlement of financial claims against Germany, claims arising out of the war which remain unsettled, and claims in respect of Allied property in Germany. The intention is also proclaimed in this minute of seeking formal recognition of such claims from the German Federal Government.

In addition to the above points raised at the Cabinet's meeting, there were a number of other matters to which attention was drawn by interested Government Departments. These included :—

- (i) Objections to the form of the Occupation Statute, *i.e.*, its failure to provide an adequate legal basis for relations between the Germans and ourselves.
- (ii) The omission of the Revision Clause in the Occupation Statute.
- (iii) Omission of any provision for requiring the German Government to pay compensation to its own nationals in respect of Allied seizure of German external assets or reparations. On this point there are international commitments.
- (iv) The proposal to establish Tripartite Commissions in each Land.
- (v) The reference to the desirability of reducing occupation troops in the Tripartite Control Agreement.
- (vi) Inclusion of the Western sectors of Berlin in the area to be governed by the Tripartite Control Agreement.

These points have been met in the following way :—

- (i) *Text of the Occupation Statute.*—This is now to be in the form of a proclamation rather than of a letter from the Military Governors to the Parliamentary Council.
- (ii) *Revision Clause.*—This has been included (see clause 9 of the Statute).
- (iii) *Compensation.*—We have not been able to secure a specific reference in the Occupation Statute to the reservation of powers in this connection. It is the view of the Americans, however, that this matter is covered by restitution and reparations under paragraph 2b of the Occupation Statute, and we have been assured that the Americans are equally mindful of international commitments.
- (iv) *Tripartite Commissions.*—Instead of having Tripartite Commissions in each Land, the High Commission will be represented by a Land Commissioner who will be solely responsible to the Commission. He will be a national of the Power in whose Zone the Land is situated. The other Powers will be represented only by observers without executive functions. (Paragraph 9 of the Tripartite Control Agreement (Annex C).)
- (v) *Occupation Troops.*—It has been agreed to cut out the reference to the reduction of occupation troops in the Tripartite Control Agreement (Annex C).
- (vi) *Berlin.*—It has been agreed to omit the reference to the Western sectors of Berlin in the Tripartite Control Agreement and an agreed minute (Annex D) has been drawn up providing for the principles of this agreement to be applied so far as practicable to the Western sectors of Berlin.

The signature of these texts completes the Allied side of the preparatory work which is necessary for the establishment of a Government for Western Germany. The remaining hurdle before us is the elaboration of the Basic Law (Provisional Constitution).

Here the principal conflict concerns the financial provisions of the Basic Law, with the French and Americans backing the Right wing and Federalist Christian Democrats, and ourselves backing the Social Democrats in favour of a more centralised solution.

The three Foreign Ministers have drawn up a message on the Basic Law (attached at Annex H) to be delivered to the Parliamentary Council by the Military Governors at a time to be determined by them.

The Military Governors have been instructed to inform the Parliamentary Council that the Foreign Ministers will sympathetically consider any solution in the Basic Law which guarantees financial independence and adequate strength for both the Laender and Federal Governments in their respective fields.

The Foreign Ministers' message also indicates that they would agree to allow the Federal State to supplement from its own revenues appropriations made by the Laender from revenues from their own taxes levied and collected by them, by grants for education, health and welfare purposes, subject in each case to the specific approval of the Bundesrat (Upper House).

The acceptance by the United States and French Governments of the principle that the Federal Government should be allowed to help those Laender which are in greater need than other Laender is a concession to the Social Democrats, who have always maintained that Western Germany would not be viable if the Federal Government were not allowed this power.

It remains to be seen whether this concession to the S.P.D. will be sufficient to persuade them to reach agreement with the Christian Democrats on the Basic Law. Nevertheless, the agreement reached in Washington now places squarely on the Germans all responsibility for any further delay. This circumstance may act as a spur, since both parties are now anxious to have a Government in Western Germany.

*Foreign Office, S.W. 1,
11th April, 1949.*

ANNEX A

AGREED MEMORANDUM REGARDING PRINCIPLES GOVERNING EXERCISE OF POWERS AND RESPONSIBILITIES OF UNITED STATES-UNITED KINGDOM-FRENCH GOVERNMENTS FOLLOWING ESTABLISHMENT OF GERMAN FEDERAL REPUBLIC

1. The Governments of the United States, United Kingdom and France retain the supreme authority assumed by them under the declaration signed at Berlin on 5th June, 1945, including the right to revoke or alter any legislative or administrative decisions in the three Western Zones of Germany.

2. Generally speaking, the German governing authorities, whether federal or Land, shall be at liberty to take administrative and legislative action, and such action will have validity if not vetoed by the Allied authority. This means that Military Government will disappear, and that the functions of the Allies shall be mainly supervisory.

3. There will be certain limited fields in which the Allies will reserve the right to take direct action themselves, including the issuance of orders to German officials at both the federal and local levels. However, these fields will be restricted to a minimum; and aside from security matters the exercise of direct powers by the Allies should be regarded as temporary and self-liquidating in nature.

4. Upon the coming into being of the German Federal Republic, the responsibility for supervision of the utilisation of funds made available by the United States Government to the German economy for purposes of relief as well as of recovery will rest with the Economic Co-operation Administration. Such contributions as the United Kingdom (and French) Governments agree to make shall be within the inter-European payments agreement. It is understood that the German Federal Republic should become a party to the Convention for European Economic Co-operation and execute a bilateral agreement with the Government of the United States.

5. With the establishment of the German Federal Republic and the termination of Military Government, the functions of the Allied authorities shall be divided, military functions being exercised by a Commander-in-Chief and all other functions by a High Commissioner. Each of the Allied establishments in Germany aside from occupation forces shall come under the direction of the High Commissioner. The three High Commissioners together will constitute the Allied High Commission.

6. It is the aim of the three Governments to restrict to a minimum the size of the staffs maintained within Germany for the above purposes.

7. It is a major objective of the three Allied Governments to encourage and facilitate the closest integration, on a mutually beneficial basis, of the German people under a democratic federal State within the framework of a European association.

ANNEX B

TEXT OF OCCUPATION STATUTE

In the exercise of the supreme authority which is retained by the Governments of France, the United States and the United Kingdom, General Pierre Koenig, Military Governor and Commander-in-Chief of the French Zone of Germany, General Lucius D. Clay, Military Governor and Commander-in-Chief of the United States Zone of Germany, and General Sir Brian Hubert Robertson, Military Governor and Commander-in-Chief of the British Zone of Germany, do hereby jointly proclaim the following Occupation Statute:—

1. During the period in which it is necessary that the occupation continue, the Governments of France, the United States and the United Kingdom desire and intend that the German people shall enjoy self-government to the maximum possible degree consistent with such occupation. The Federal State and the participating Laender shall have, subject only to the limitations in this instrument, full legislative, executive and judicial powers in accordance with the Basic Law and with their respective constitutions.

2. In order to ensure the accomplishment of the basic purposes of the occupation, powers in the following fields are specifically reserved, including the right to request and verify information and statistics needed by the Occupation authorities:—

- (a) Disarmament and demilitarisation, including related fields of scientific research, prohibitions and restrictions on industry, and civil aviation;
- (b) Controls in regard to the Ruhr, restitution, reparations, decartelisation, deconcentration, non-discrimination in trade matters, foreign interests in Germany and claims against Germany;
- (c) Foreign affairs, including international agreements made by or on behalf of Germany;
- (d) Displaced persons and the admission of refugees;
- (e) Protection, prestige, and security of Allied forces, dependants, employees, and representatives, their immunities and satisfaction of occupation costs and their other requirements;
- (f) Respect for the Basic Law and the Land constitutions;
- (g) Control over foreign trade and exchange;
- (h) Control over internal action, only to the minimum extent necessary to ensure use of funds, food and other supplies in such manner as to reduce to a minimum the need for external assistance to Germany;
- (i) Control of the care and treatment in German prisons of persons charged before or sentenced by the courts or tribunals of the Occupying Powers or Occupation Authorities; over the carrying out of sentences imposed on them; and over questions of amnesty, pardon or release in relation to them.

3. It is the hope and expectation of the Governments of France, the United States and the United Kingdom that the Occupation Authorities will not have occasion to take action in fields other than those specifically reserved above. The Occupation Authorities, however, reserve the right, acting under instructions of their Governments, to resume, in whole or in part, the exercise of full authority if they consider that to do so is essential to security or to preserve democratic government in Germany or in pursuance of the international obligations of their Governments. Before so doing, they will formally advise the appropriate German authorities of their decision and of the reasons therefor.

4. The German Federal Government and the Governments of the Laender shall have the power, after due notification to the Occupation Authorities, to legislate and act in the fields reserved to these authorities, except as the Occupation Authorities otherwise specifically direct or as such legislation or action would be inconsistent with decisions or actions taken by the Occupation Authorities themselves.

5. Any amendment of the Basic Law will require the express approval of the Occupation authorities before becoming effective. Land constitutions, amendments thereof, all other legislation, and any agreements made between the Federal

State and foreign Governments, will become effective twenty-one days after official receipt by the Occupation authorities unless previously disapproved by them, provisionally or finally. The Occupation authorities will not disapprove legislation unless in their opinion it is inconsistent with the Basic Law, a Land constitution, legislation or other directives of the Occupation authorities themselves or the provisions of this instrument, or unless it constitutes a grave threat to the basic purposes of the Occupation.

6. Subject only to the requirements of their security, the Occupation authorities guarantee that all agencies of the Occupation will respect the civil rights of every person to be protected against arbitrary arrest, search or seizure; to be represented by counsel; to be admitted to bail as circumstances warrant; to communicate with relatives; and to have a fair and prompt trial.

7. Legislation of the Occupation authorities enacted before the effective date of the Basic Law shall remain in force until repealed or amended by the Occupation authorities in accordance with the following provisions:—

- (a) Legislation inconsistent with the foregoing will be repealed or amended to make it consistent herewith.
- (b) Legislation based upon the reserved powers referred to in paragraph 2 above, will be codified.
- (c) Legislation not referred to in (a) and (b) will be repealed by the occupation authorities on request from appropriate German authorities.

8. Any action shall be deemed to be the act of the Occupation authorities under the powers herein reserved, and effective as such under this instrument, when taken or evidenced in any manner provided by any agreement between them. The Occupation authorities may in their discretion effectuate their decisions either directly or through instructions to the appropriate German authorities.

9. After twelve months and in any event within eighteen months of the effective date of this instrument the Occupying Powers will undertake a review of its provisions in the light of experience with its operation and with a view to extending the jurisdiction of the German authorities in the legislative, executive and judicial fields.

ANNEX C

TEXT OF AGREEMENT ON TRIPARTITE CONTROLS

The Governments of the United Kingdom, France and the United States agree to enter into a trizonal fusion agreement prior to the entry into effect of the Occupation Statute. The representatives of the three Occupying Powers will make the necessary arrangements to establish tripartite control machinery for the western zones of Germany, which will become effective at the time of the establishment of a provisional German Government. The following provisions agreed by the Governments of the United Kingdom, France and the United States shall form the basis of these arrangements:—

1. An Allied High Commission composed of one High Commissioner of each Occupying Power or his representative shall be the Supreme Allied Agency of Control.

2. The nature and extent of controls exercised by the Allied High Commission shall be in harmony with the Occupation Statute and international agreements.

3. In order to permit the German Federal Republic to exercise increased responsibilities over domestic affairs and to reduce the burden of occupation costs, staff personnel shall be kept to a minimum.

4. In the exercise of the powers reserved to the Occupation authorities to approve amendments to the federal constitution, the decisions of the Allied High Commission shall require unanimous agreement.

5. In cases in which the exercise of, or failure to exercise, the powers reserved under paragraph 2 (G) of the Occupation Statute would increase the need for assistance from United States Government appropriated funds, there shall be a system of weighted voting. Under such system the representatives of the Occupation Authorities will have a voting strength proportionate to the funds made available to Germany by their respective Governments. This provision shall not, however, reduce the present United States predominant voice in J.E.I.A. and J.F.E.A. while these organisations, or any successor organisation to them, continue in existence and are charged with the performance of any of their present functions. No action taken hereunder shall be contrary to any inter-Governmental agreement among the signatories or to the principles of non-discrimination.

6. On all other matters action shall be by majority vote.

7.—(A) If a majority decision alters or modifies any inter-Governmental agreement which relates to any of the subjects listed in paragraphs 2 (A) and 2 (B) of the Occupation Statute, any dissenting High Commissioner may appeal to his Government. This appeal shall serve to suspend the decision pending agreement between the three Governments.

(B) If a High Commissioner considers that a majority decision conflicts with any inter-Governmental agreement which relates to any of the subjects in paragraphs 2 (A) and 2 (B) of the Occupation Statute or with the fundamental principles for the conduct of Germany's external relations or with matters essential to the security, prestige, and requirements of the Occupying Forces, he may appeal to his Government. Such an appeal shall serve to suspend action for thirty days, and thereafter unless two of the Governments indicate that the grounds do not justify further suspension.

(C) If such appeal is from an action of the Allied High Commission either declining to disapprove or deciding to disapprove German legislation, such legislation shall be provisionally disapproved for the duration of the appeal period.

8. A High Commissioner who considers that a decision made by less than unanimous vote involving any other matter reserved by the Occupation Statute is not in conformity with basic tripartite policies regarding Germany, or that a Land constitution, or an amendment thereto, violates the Basic Law, may appeal to his Government. An appeal in this case shall serve to suspend action for a period not to exceed twenty-one days from the date of the decision unless all three Governments agree otherwise. If such appeal is from an action of the Allied High Commission either declining to disapprove or deciding to disapprove German legislation, such legislation shall be provisionally disapproved for the duration of the appeal period.

9. All powers of the Allied High Commission shall be uniformly exercised in accordance with Tripartite policies and directives, to this end in each Land the Allied High Commission shall be represented by a single Land Commissioner who shall be solely responsible to it for all tripartite affairs. In each Land the Land Commissioner shall be a national of the Allied Power in whose zone the Land is situated. Outside his own zone each High Commissioner will delegate an observer to each of the Land Commissioners for purposes of consultation and information. Nothing in this paragraph shall be construed to limit the functions of bodies established pursuant to inter-Governmental agreement.

10. To the greatest extent possible all directives and other instruments of control shall be addressed to the Federal and/or Land authorities.

11. The Trizonal Fusion Agreement will continue in force until altered by agreement among the Governments.

ANNEX D

AGREED MINUTE REGARDING WESTERN SECTORS OF BERLIN

It was agreed that the provisions of the agreement as to Tripartite controls shall be applied as far as practicable to the Western Sectors of Berlin.

ANNEX E

AGREED MINUTE ON SETTLEMENT OF FINANCIAL CLAIMS AGAINST GERMANY

The Governments of France, the United Kingdom and the United States will proceed, in consultation with other Governments concerned, to develop proposals for the settlement of financial claims against Germany, claims arising out of the war which remain unsettled, claims with respect to Allied property in Germany, and other questions of an economic or legal character arising out of the existence of a state of war between Germany and the Allied Powers. There should also be appropriate consultation with the German Federal Republic. Prior to the relinquishment of reserved powers in the field of foreign exchange, the three Governments will give consideration to the desirability of obtaining from the German Federal Government formal recognition of such claims.

ANNEX F

AGREED MINUTE ON WUERTEMBERG AND BADEN

It was agreed that the *status quo* in Wuerttemberg and Baden would be maintained for the time being and that the plebiscite recommended by the German Minister Presidents would be postponed in the interest of avoiding any possible delay in the establishment of the German Federal Government. It was further agreed that the question of the Wuerttemberg-Baden Land boundaries would be re-examined after the establishment of the German Federal Government.

ANNEX G

AGREED MINUTE ON KEHL

The French control authorities, with the assistance of the Strasbourg French Authorities, will maintain under existing conditions jurisdiction over the Kehl port zone until establishment of the German Federal Government and conclusion of negotiations between the French and German authorities with respect to a joint port administration for Kehl.

It was agreed, on a proposal of the French Government, that the City of Kehl would gradually be returned to German administration. It was foreseen that the French temporarily domiciled in Kehl might remain during a four-year period required for the preparation of additional housing in Strasbourg. Around one-third of the French inhabitants will be able to leave Kehl within several months, and the remainder progressively thereafter as housing becomes available.

The final decision with respect to the Kehl port zone will be made in the peace settlement. If the port authority develops harmoniously the United States and United Kingdom will be willing at the time of the peace settlement to bring an attitude of good-will toward the establishment of a permanent joint authority.

ANNEX H

TEXT OF INSTRUCTION TO THE MILITARY GOVERNORS WITH REGARD TO THE
BASIC LAW

For your guidance the Foreign Ministers transmit herewith their views on the Basic Law. It is left to the Military Governors to determine the time they may consider it appropriate to communicate these views to the Parliamentary Council, but the Foreign Ministers wish that they be transmitted before opinion

in the Parliamentary Council has crystallised in order that the views given below may be reflected in the Basic Law.

- “(a) The Foreign Ministers are not able to agree at this time that Berlin should be included as a Land in the initial organisation of the German Federal Republic.
- (b) In the financial field any provisions put forward by the Parliamentary Council in the direction of securing financial independence and adequate strength for both the Laender and Federal Governments in operating in their respective fields will receive sympathetic consideration.
- (c) On the question of Article 36 (Article 95 (C)) they will also give sympathetic consideration to any formula which :—
 - (i) Eliminates from the Federal Powers those matters definitely excluded by the London Agreement.
 - (ii) Assures to the Laender sufficient powers to enable them to be independent and vigorous governmental bodies.
 - (iii) Assures to the Federal Government sufficient powers in the important fields of government to enable them to deal effectively with those fields in which the interests of more than one Land are substantially and necessarily involved.
- (d) Finally, the Foreign Ministers request that the Military Governors indicate to the Parliamentary Council at an appropriate time that they are ready to contemplate a suggestion for right of the Federal State to supplement from its own revenues appropriations made by the Laender from revenues from their own taxes levied and collected by them, by grants for education, health and welfare purposes, subject in each case to specific approval of the Bundesrat.”

ANNEX I

MESSAGE FROM FOREIGN SECRETARIES FOR DELIVERY TO PARLIAMENTARY COUNCIL BY THE MILITARY GOVERNORS

“The Foreign Ministers have considered the problem of a Federal German Republic in all its aspects in Washington and have come to a number of important decisions of policy in regard thereto. They have decided that, in general, the German authorities shall be at liberty to take administrative and legislative action, and that such action will have validity if not vetoed by Allied authorities. There will be certain limited fields in which the Allies will reserve the right to take direct action themselves and which are set out in the Occupation Statute, a copy of which is attached hereto.

With the establishment of the German Federal Republic, military government as such will terminate and the functions of the Allied authorities will be divided—control functions being exercised by a High Commissioner and military functions by a Commander-in-Chief. The three High Commissioners together will constitute an Allied High Commission, and it is the aim of the three Governments to restrict to a minimum the size of the supervisory staffs attached to their respective High Commissioners.

Foreign Ministers further affirm that it is a major objective of the three Allied Governments to encourage and facilitate the closest integration on a mutually beneficial basis of the German people under a democratic Federal State within the framework of a European association.

Nevertheless, before the far-reaching developments which they contemplate can be put in hand, it is essential that an agreement should be reached by the Parliamentary Council upon a basic law for the German Federal Republic.”